

**CITY OF NASHUA
ZONING BOARD OF ADJUSTMENT
BY-LAWS, RULES AND ZONING PROCEDURE**

1. AUTHORITY

These by-laws are adopted under the authority of New Hampshire Revised Statutes (2007-2008 Edition) (Title LXIV, Chapters 672, 673, 674, 675, 676, 677), Nashua Revised Ordinances (last recodified in 1987, draft recodified 2007), Chapter 190 – Nashua Revised (Land Use) Ordinances (adopted 2/26/08); and any or all subsequent amendments.

2. PURPOSE

The purpose of these by-laws is to ensure an orderly procedure in the execution of the duties of the Board.

3. BY-LAWS AMENDMENTS

These by-laws may be amended by a majority vote of the members of the Zoning Board of Adjustment provided such amendments are read at two successive public meetings.

4. ZONING BOARD OFFICERS

A Chairman shall be elected annually in the month of January by a majority vote of the Board. Said Chairman shall serve for a period of one (1) year and shall be eligible for re-election. He/she shall preside over all meetings, hearings, and executive sessions, appoint such committees as directed by the Board, and shall perform other such duties as the Board may direct.

- a) The Vice-Chairman shall be elected in the same manner and for the same period as the Chairman. Said Vice-Chairman shall be eligible for re-election. He/she shall have the same powers as the Chairman during the absence of the Chairman.
- b) The Clerk shall be elected in the same manner and for the same period as the Chairman. Said Clerk shall be eligible for re-election. He/she shall record the motions and votes of the Board as they are announced at the public meeting following the public hearing.
- c) In the event that any of the above officers for any reason is unable to continue in his/her elective capacity and upon notice to the Board to this effect, a new election will be held at a public meeting to elect a successor who will serve until the next annual election.

5. PUBLIC HEARINGS – LOCATION AND NOTIFICATION

A regular public hearing shall be held in a public building, when there are applications, at least twice a month. (During application periods where one, or only a few applications are received, an applicant may, at the option of the Zoning Administrator, sign a form waiving his/her rights to a hearing within 30 days. The applicant will then be scheduled for the next regular agenda.) Public Hearings may be called at other times as the Board may determine, or upon call of the Chairman. (Normal scheduling is the second and fourth Tuesday of each month at 6:30 p.m. except December, when there is only one meeting on the first Tuesday.) Written notices shall each be given to each member and alternate member prior to public advertising notice of the scheduled hearing. Public notice of each scheduled/called hearing shall be given as per Section 190-126 of the Zoning Ordinance. Notices shall include date, time and location of continued hearing wherein all business may not be transacted at the scheduled hearing. Notices shall include adequate description and location of the property, the petitioner(s) and owner(s), and all variances or special exceptions sought. The order of hearing these cases is subject to change.

6. CONTROL OF AGENDA

The Zoning Board of Adjustment shall control the agenda and its content in executive session.

7. EXECUTIVE SESSIONS

Executive sessions are to be scheduled to precede or to follow the public hearings in a public building. Executive sessions other than those following the public hearings may be held in a public building on call of the Chairman. It is desirable for written notice to be given to each member and alternate member of the Board at least two (2) days prior to the exceptional executive meetings, stating the time, agenda and place of such sessions.

8. CONDUCT OF HEARING

The conduct of the public hearings shall be governed by the following guidelines:

- a) The Chairman shall call the Hearing to order provided that a quorum of three (3) members is present.
- b) The Chairman shall explain the procedure to be followed and state the conditions of the ordinance for granting the requested variance or special exception.
- c) The Chairman shall present the order in which the applications for hearing shall be heard and which may or may not be in order as advertised.

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- d) The Chairman shall read the application for hearing as advertised.
- e) The applicant or his/her representative shall present his/her reasons for the hearing. At this time a lesser request than that advertised may be accepted by the Chairman. The applicant has a maximum time limit of fifteen (15) minutes to present his/her case.
- f) Others in favor of the variance/special exception shall be allowed to speak. Those speaking in favor have a maximum time limit of five (5) minutes each.
- g) Those in opposition or with questions or concerns to the variance/special exception shall be allowed to speak following those in favor. Those speaking in opposition or with questions or concerns have a maximum time limit of five (5) minutes each.
- h) A representative from the City Planning Staff shall give his/her staff report relating to use variance requests.
- i) The applicant or his/her representative shall be allowed to speak once in rebuttal. The person speaking in rebuttal for the case has a maximum time limit of five (5) minutes.
- j) A representative of those in opposition or with questions or concerns shall then be allowed to speak once in rebuttal. The person speaking in rebuttal in opposition to the case has a maximum time limit of five (5) minutes.
- k) The Chairman in his/her discretion may limit the time of any speaker, either for or against the variance/special exception.
- l) Each speaker shall identify himself/herself for the record by stating his/her full name and address.
- m) Each member of the Board & the Zoning Administrator or his/her representative may ask questions at any point in the hearing to clarify information regarding the case.
- n) Any party to the hearing who desires to ask a question of another party to the hearing must be recognized by the Chairman to do so.
- o) If a quorum of three (3) members is not present, no cases will be heard. Pursuant to RSA 674:33, III, the concurring vote of three (3) members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to

pass. The Zoning Board of Adjustment shall make no rule permitting the applicant to require more members than a quorum to make a decision on its application. The applicant may withdraw his application at any time and refile subject to a refiling fee set by the board under its rules.

9. VOTE AND NOTICE OF DECISION

The Board shall vote on each application for a variance, special exception, appeal of an administrative decision, or request for rehearing. The vote shall be taken in a public meeting held after the public hearing; session may be conducted upon a majority vote of the Board, however, voting on the application must be made at a public meeting. Any decisions of the Board must be worded as to reason.

10. POSTPONEMENT AND WITHDRAWAL

Each application for a variance or special exception may be postponed or withdrawn after public notice by publication has been given only by written notice to the Zoning Administrator by the applicant. Such written notice must be received prior to 12 noon, six (6) days preceding the scheduled public hearing and all postponements and withdrawals will be published in the newspaper, the last publishing day prior to the scheduled public hearing. Postponements and withdrawals after the six (6) day limit may be made at the discretion of the Board. For each application properly postponed or withdrawn, the Chairman shall announce the action taken by the applicant prior to the start of that Board hearing and once thereafter during the hearing. Any application withdrawn shall be made without benefit of a refund of the filing fees and that once an application is withdrawn any re-application shall be considered a new application and shall require sufficient or clear evidence accompanying the application to allow proper consideration by the Board.

11. REPRESENTATION

Each application for a variance, special exception or appeal of the Zoning Administrator's decision for which no representation appears at the hearing shall be denied by the Board if there exists insufficient or unclear evidence accompanying the application to allow proper consideration by the Board.

12. REHEARING

Application for rehearing to appeal the Board's decision may be made by a party either for or against a variance/special exception within thirty (30) days of the Board's decision. The written rehearing request application and any initial substantive information must be received within 30 days of said decision. The 30-day time period is counted in calendar days beginning with the date after the Board voted to approve or disapprove the application.

13. PLANS AND RELATED INFORMATION

Applications for hearing shall close on the dates posted in the Community Development Department. Plans and related information must be available with the application. These plans and information may be expanded upon or clarified at the hearing with added information. It is the responsibility of the applicant to apply for all necessary variances and/or special exceptions related to his application.

14. PUBLIC INSPECTION

The Zoning Administrator shall keep a copy of these by-laws available for inspection by the public in the Planning Department. He/she shall also keep an adequate supply of applications for variance and applications for dissemination to a person who might request these applications. He/she will give each applicant a single sheet containing legal requirements for obtaining variances and special exceptions.

15. APPEAL

Any appeal from the decision of the Zoning Administrator made under applicable sections and subsections of the City of Nashua Zoning Ordinance shall be made within thirty (30) days of said decision. The 30-day time period is counted in calendar days beginning with the day after the Board voted to approve or disapprove the application.

16. FEE

The application fee for a hearing shall be set in accordance with Section 190-267 of the Zoning Ordinance and any subsequent amendment thereto.

17. SUPPLEMENTARY FINDINGS OF FACT AND RULINGS OF LAW

In addition to findings of fact and rulings of law expressly made by the Board, if during the course of its deliberations on an application factual statements or legal conclusions are expressed by a member directly relating to the legally required elements needed to be established in order to grant the application being considered, the same shall be deemed to be findings and rulings of the Board to the extent consistent with its decision unless any member shall dispute the factual statement or legal conclusion, in which case the same shall not be supplementary findings and rulings of the Board unless the Board shall so vote, or it is clear from the record the same has otherwise been adopted by a majority of the Board sitting.

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Accepted this date, January 26, 2010, by the Board of Adjustment and adopted on January 26, 2010.

Chairman Jack Currie Jan 26, 2010

Vice Chairman Sean Duff 1/26/10

Clerk Duff GFG 3/23/10

Revised: January 20, 2010 by Carter Falk, Planning Staff.